

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ARELIO EVANS,

Plaintiff,

CASE NO. 2:17-CV-46

v.

HON. ROBERT J. JONKER

THOMAS PRISK, *et al.*,

Defendants.

ORDER APPROVING AND ADOPTING
REPORT AND RECOMMENDATION

The Court has reviewed Magistrate Judge Greeley's Report and Recommendation in this matter (ECF No. 107) and Defendants' Objections (ECF No. 109).¹ Under the Federal Rules of Civil Procedure, where, as here, a party has objected to portions of a Report and Recommendation, “[t]he district judge . . . has a duty to reject the magistrate judge’s recommendation unless, on de novo reconsideration, he or she finds it justified.” 12 WRIGHT, MILLER, & MARCUS, FEDERAL PRACTICE AND PROCEDURE, § 3070.2, at 451 (3d ed. 2014). Specifically, the Rules provide that:

The district judge must determine de novo any part of the magistrate judge’s disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

FED. R. CIV. P. 72(b)(3). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981). The Court has reviewed de novo the claims and evidence presented to the Magistrate Judge; the

¹ Plaintiff has not filed an objection, and the period for objection has expired.

Report and Recommendation itself; and Defendants' Objections. The Court finds the Magistrate Judge's Report and Recommendation factually sound and legally correct.

The Magistrate Judge recommends granting Defendants' motion for summary judgment as to Plaintiff's RLUIPA, First Amendment, and conspiracy claims, and denying the motion as to Plaintiff's Equal Protection claim. The Magistrate Judge points out that Defendants' motion fails to address Plaintiff's Equal Protection claim that Defendants have failed to apply the Policy Directive 05.03.150(V) equally to each religion. In their Objections, Defendants reiterate their arguments that Plaintiff's First Amendment claim subsumes his Equal Protection claim and that Plaintiff has failed to show intentional discrimination. The Magistrate Judge properly rejected both arguments. Plaintiff asserts a stand-alone Equal Protection claim that Defendants have failed to apply the policy equally to each religion. At the summary judgment stage, Defendants must address Plaintiff's factual claim that they allowed group services for less than five practitioners of other religions. Defendants' bald assertion that Plaintiff has not shown intentional discrimination does not meaningfully address the merits of Plaintiff's claim and is not enough to support summary judgment.

ACCORDINGLY, IT IS ORDERED:

1. The Report and Recommendation of the Magistrate Judge (ECF No. 107) is **APPROVED AND ADOPTED** as the opinion of the Court.
2. Defendants' Motion for Summary Judgment (ECF No. 94) is **GRANTED** as to Plaintiff's RLUIPA, First Amendment, and conspiracy claims, and is **DENIED** as to Plaintiff's Equal Protection claim.

Dated: August 6, 2018

/s/ Robert J. Jonker
ROBERT J. JONKER
CHIEF UNITED STATES DISTRICT JUDGE